

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:10-00111-09

MOISES GAMBOA

MEMORANDUM OPINION AND ORDER

Pending before the Court is Moises Gamboa's *pro se* letter for release (ECF No. 801).

Gamboa argues that a reduction in sentence is warranted for two reasons. First, Defendant points to the spread of the novel coronavirus in prisons. Second, Defendant argues that his sentence of 200 months of incarceration is excessive under 18 U.S.C. § 3553(a).

While the Court is sympathetic to Defendant's concerns regarding the coronavirus and looks favorably on his rehabilitative efforts, he has not demonstrated extraordinary and compelling reasons for release. Defendant's medical records show that he does not have any preexisting conditions which place him at risk of severe complications if he contracts COVID-19. The mere possibility of contracting the illness is not a sufficiently "extraordinary and compelling" reason to justify a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A)(i). *See, e.g., United States v. Feiling*, No. 3:19cr112 (DJN), 2020 WL 1821457, at *7 (E.D. Va. Apr. 10, 2020) (reasoning that "the *fear* of contracting a communicable disease proves insufficient to justify a sentence modification" (internal quotations omitted)). Additionally, the Court finds that 200 months incarceration (which reflects the Court's downward variance from the sentencing guidelines) is not excessive for the reasons stated at Gamboa's sentencing hearing. *See* ECF No. 721.

Finally, even if Defendant alleged extraordinary and compelling reasons for release, the Court has no authority to reduce Defendant's sentence where—as here—he has not demonstrated that he “has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion” or that thirty days have lapsed “from the receipt of such a request by the warden of the defendant’s facility.” *See* 18 U.S.C. § 3582(c)(1)(A).

The Court accordingly **DENIES** the Motion (ECF No. 801), and **DIRECTS** the Clerk to send a copy of this Order to counsel and the defendant, the United States Attorney’s Office, the United States Probation Office, and the United States Marshals Service.

ENTER: January 22, 2021



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE